

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

AUG 27 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

TIANTE DION SCOTT,

Petitioner-Appellant,

v.

JEFF LYNCH,

Respondent-Appellee.

No. 23-16003

D.C. No. 2:22-cv-01815-TLN-DB
Eastern District of California,
Sacramento

ORDER

Before: SCHROEDER and NGUYEN, Circuit Judges.

Appellant's opening brief (Docket Entry No. 2) is construed as a request for a certificate of appealability. So construed, the request is denied because appellant has not made a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *see also Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Any pending motions are denied as moot.

DENIED.

APPENDIX G

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10

11 TIANTE DION SCOTT,
12 Petitioner,

No. 2:22-cv-01815-TLN-DB

13 v.

ORDER

14 JEFF LYNCH,
15 Respondent.
16

17 Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas
18 corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate
19 Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

20 On April 12, 2023, the magistrate judge filed findings and recommendations herein which
21 were served on Petitioner and which contained notice to Petitioner that any objections to the
22 findings and recommendations were to be filed within thirty days. Petitioner has filed objections
23 to the findings and recommendations.

24 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this
25 Court has conducted a de novo review of this case. Having carefully reviewed the entire file, the
26 Court finds the findings and recommendations to be supported by the record and by proper
27 analysis.


28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations filed April 12, 2023 (ECF No. 7), are ADOPTED IN FULL;
2. Petitioner's application for a writ of habeas corpus be summarily DISMISSED; and
3. The Court declines to issue the certificate of appealability referenced in 28 U.S.C. § 2253.
4. The Clerk of Court is directed to close the case.

Date: June 12, 2023



Troy L. Nunley
United States District Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

APPENDIX H

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TIANTE DION SCOTT,
Petitioner,
v.
JEFF LYNCH,
Respondent.

No. 2:22-cv-01815 DB P

ORDER AND
FINDINGS & RECOMMENDATIONS

Petitioner, a state prisoner, filed a pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 on October 13, 2022. (ECF No. 1.) Petitioner has also filed an affidavit in support of an application to proceed in forma pauperis. (ECF No. 5.) Examination of the affidavit reveals petitioner is unable to afford the costs of this action. Leave to proceed in forma pauperis is granted. 28 U.S.C. § 1915(a). Upon screening the petition, however, it plainly appears petitioner is not entitled to relief. It is therefore recommended the court summarily dismiss the petition.

I. Screening Requirement

Under Rule 4 of the Rules Governing Section 2254 Cases, this court is required to conduct a preliminary review of all petitions for writ of habeas corpus filed by state prisoners. The court must summarily dismiss a petition if it “plainly appears from the petition and any attached exhibits that the petition is not entitled to relief in the district court.” Rule 4, 28 U.S.C. foll. § 2254. The court may summarily dismiss a petition for writ of habeas corpus on its own motion

1 after providing the petitioner with adequate notice and an opportunity to respond. Herbst v. Cook,
2 260 F.3d 1039, 1043 (9th Cir. 2001).

3 **II. Allegations in the Petition**

4 A jury convicted petitioner of four counts of first-degree robbery, resulting in a 36-year
5 prison term imposed in 2009. (ECF No. 1 at 1.) Petitioner was subjected to a sentencing
6 enhancement under California Penal Code § 667.5(b) which, following the enactment of Senate
7 Bill 483 (“SB 483”) and former California Penal Code § 1171.1 (eff. Jan. 1, 2022 to June 29,
8 2022, renumbered § 1172.75 and amended), is now legally invalid. (Id. at 8.)

9 Even though petitioner is serving an invalid sentence, prison staff has refused to identify
10 him as eligible for resentencing under applicable state law resentencing provisions. (ECF No. 1 at
11 6-9.) Petitioner filed a motion for resentencing in state court, which the superior court denied. (Id.
12 at 23.) The superior court found that petitioner will be entitled to resentencing under SB 483, but
13 that his request for relief was premature. (Id. at 23.) Petitioner’s appeal of the denial of the motion
14 for resentencing was dismissed, and the California Supreme Court denied review. (Id. at 4-5.)

15 **III. Failure to State a Claim**

16 The petition fails to assert a cognizable federal claim. Rather, it asserts an alleged state-
17 law sentencing issue. “[I]t is not the province of a federal habeas court to reexamine state-court
18 determinations on state-law questions.” Estelle v. McGuire, 502 U.S. 62, 67-68 (1991). This
19 includes the interpretation or application of state sentencing laws. Miller v. Vasquez, 868 F.2d
20 1116, 1118–19 (9th Cir. 1989) (declining to address “[w]hether assault with a deadly weapon
21 qualifies as a ‘serious felony’ under California’s sentence enhancement provisions [because it] is
22 a question of state sentencing law”). Federal habeas law only provides a remedy for violations of
23 the Constitution or laws or treaties of the United States. Langford v. Day, 110 F.3d 1380, 1389
24 (9th Cir. 1996) (as amended) (“alleged errors in the application of state law are not cognizable in
25 federal habeas corpus” proceedings). The petition’s factual allegations fail to assert a violation of
26 the Constitution or laws or treaties of the United States. Therefore, petitioner’s claim that he is
27 serving an invalid sentence under California law, as amended, fails to state a claim.

28 ////

1 **IV. Conclusion, Order, and Recommendation**

2 For the reasons set forth above, it is plain from the petition and appended exhibits that
3 petitioner is not entitled to federal habeas relief. The petition should be summarily dismissed
4 without leave to amend because no tenable claim for relief could be pleaded even with the
5 allegation of additional facts. See Jarvis v. Nelson, 440 F.2d 13, 14 (9th Cir. 1971) (per curiam).

6 Pursuant to Rule 11 of the Rules Governing Section 2254 Cases in the United States
7 District Courts, "[t]he district court must issue or a deny a certificate of appealability when it
8 enters a final order adverse to the applicant." Rule 11, 28 U.S.C. foll. § 2254. A certificate of
9 appealability may issue under 28 U.S.C. § 2253 "only if the applicant has made a substantial
10 showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The court must either
11 issue a certificate of appealability indicating which issues satisfy the required showing or must
12 state the reasons why such a certificate should not issue. Fed. R. App. P. 22(b). For the reasons
13 set forth in these findings and recommendations, petitioner has not made a substantial showing of
14 the denial of a constitutional right. Accordingly, no certificate of appealability should issue.

15 In accordance with the above, IT IS HEREBY ORDERED that:

- 16 1. The Clerk of the Court shall assign a district judge to this case.
17 2. The Clerk of the Court is directed to serve a copy of the petition filed in this case
18 together with a copy of these findings and recommendations on the Attorney General
19 of the State of California.
20 3. Petitioner's motion to proceed in forma pauperis (ECF No. 5) is granted.

21 In addition, IT IS HEREBY RECOMMENDED that:

- 22 1. Petitioner's application for a writ of habeas corpus be summarily dismissed.
23 2. The Court decline to issue the certificate of appealability under 28 U.S.C. § 2253.

24 These findings and recommendations are submitted to the District Judge assigned to this
25 case pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within thirty (30) days after being
26 served with these findings and recommendations, petitioner may file written objections with the
27 court. The document should be captioned "Objections to Magistrate Judge's Findings and
28 Recommendations." Petitioner is advised that failure to file objections within the specified time

1 may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir.
2 1991).

3 Dated: April 12, 2023


DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

DLB7
scot1815.156.fr

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 10 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

TIANTE DION SCOTT,

Petitioner-Appellant,

v.

JEFF LYNCH,

Respondent-Appellee.

No. 23-16003

D.C. No. 2:22-cv-01815-TLN-DB
Eastern District of California,
Sacramento

ORDER

Before: GRABER and TALLMAN, Circuit Judges.

Appellant's motion to extend time (Docket Entry No. 7) is granted.

Appellant's motion for reconsideration (Docket Entry No. 8) is deemed timely
filed and is denied. *See* 9th Cir. R. 27-10.

No further filings will be entertained in this closed case.

APPENDIX A

**Additional material
from this filing is
available in the
Clerk's Office.**